

IN THE DISTRICT COURT OF SANPETE COUNTY, STATE OF UTAH

GUNNISON-FAYETTE CANAL
COMPANY, A Utah Corporation,

Plaintiff,

-VS-

GUNNISON IRRIGATION COMPANY,
A Utah Corporation,

Defendant,

JUDGMENT ENTERED
JUDGMENT BOOKET

No. 3 Page 6
AMENDED JUDGMENT

Civil No. 5444

FILED

FEB 13 1968

CLERK
FIFTH JUDICIAL DISTRICT COURT
SANPETE COUNTY, UTAH
DEPUTY

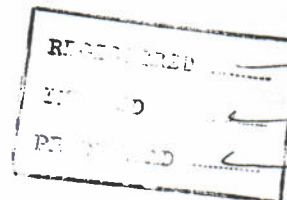
The Motion of Plaintiff, Gunnison-Fayette Canal Company, for a Summary

Judgment under Rule 56, Utah Rules of Civil Procedure, in favor of the Plaintiff upon the issue of priorities to divert water having been heard by the Court on the 20th day of March, 1967, the Plaintiff being represented by Ken Chamberlain of the firm of Olsen and Chamberlain and the Defendant by Macoy A. McMurray of McKay and Burton and the Court having heard oral arguments and having considered the documentary exhibits admitted into evidence and the records, files, and discovery proceedings and having received responsive briefs from both of the parties, the last of which was filed on May 18, 1967, and having considered all of the same and being fully advised in the premises, now concludes and holds:

1. That the provisions of the Cox Decree, the final decree in the case of Richlands Irrigation Company, et al., Plaintiff, vs. Westview Irrigation Company, et al., Defendants, Case No. 843 in the Fifth Judicial District Court of the State of Utah in and for Millard County, with respect to the priority of the 25 c.f.s. as against Highland Canal Company awarded to the Plaintiff, Gunnison-Fayette Canal Company, on Page 167 of the printed edition of the Cox Decree, are not ambiguous and are not unclear and the Decree in that respect is not susceptible of more than one interpretation and there is, therefore, no need of resorting to extrinsic evidence to arrive at an interpretation thereof.

RECORDED IN Judgment
RECORD NO. 16 PAGE 274-375

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2. That there are no genuine issues of law or fact remaining in the above entitled action after the Plaintiff's claim for damages had been stricken by a prior order of the Court.

3. That the Plaintiff is entitled to a Judgment as a matter of law upon all of the remaining issues in said action:

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. The Plaintiff's Motion for Summary Judgment should be and hereby is granted.

B. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff, Gunnison-Fayette Canal Company, is entitled to divert and use a maximum of 40 c.f.s. of water from the San Pitch River under the following priorities:

- (1) The Plaintiff is entitled to divert and use 25 c.f.s. of the aforesaid 40 c.f.s. of water from the San Pitch River prior to delivery to Defendant of any of the waters of the San Pitch River and its tributaries, Six Mile Creek and Twelve Mile Creek, awarded to Highland Canal Company, Inc. (now merged into the Defendant corporation), in paragraphs (a) through (d) at pages 166-167 of the printed edition of the Cox Decree.
- (2) That after those rights awarded to the Defendant and its predecessors by the Cox Decree are filled, the Plaintiff shall be entitled to divert the remaining 15 c.f.s. of its decreed 40 c.f.s. before the Defendant (and its constituent corporations) are to divert any additional waters.
- (3) Nothing contained in this Amended Judgment shall be construed to affect the Defendants' rights provided in Paragraph (e) on Page 167 of the printed edition of the Cox Decree under the caption "Storage and Irrigation", said rights having not been considered or litigated in the above entitled case, said rights, however, being subject to any limitations set forth in the aforesaid printed edition of the Cox Decree.

C. The Plaintiff is awarded its costs in said action.

DATED this 19th day of February, 1968.

Approved as to Form:

Ken Chamberlain

Macoy A. McMurray

BY THE COURT

Henry Rogers
District Judge

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